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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,651	07/09/2003	Helmut Schmetzer	F-7880	9972

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NEW YORK, NY 10168

EXAMINER

SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/616,651

Applicant(s)

SCHMETZER, HELMUT

Examiner

John Sipos

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/14/2003
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2,6,9 and 10 are rejected under **35 U.S.C. ' 112, second paragraph**, as being **indefinite** for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedence for “the strap storage” of claim 2, line 3.

Claim 6 does not recite any structure and the use of the term “can be” recites only a function that may, or may not, take place. The structure should be positively recited.

There is no antecedence for shifting the strap carrier “along” the axis of the strapping roll since the position of the carrier is not previously recited in claims 1 or 9. Also, the use of the term “can be” recites only a function that may, or may not, take place.

There is no antecedence for “the connecting section” of claim 10, line 2 when it depends on claim 9. Also, “pivoted axis” in line 3 has no proper antecedence.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1,2,7,11 and 12 are rejected under **35 U.S.C. ' 102(b)** as being anticipated by the patent to Leslie (3,331,312). The patent to Leslie shows a strapping machine comprising a supply roll R, a movable strap carrier roller 33, a mechanism for moving the roller 35,36, a strap storage comprising holding elements 32, an upstream holding clamp 38 and a downstream holding clamp 39.

The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3,4 and 13 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Leslie (3,331,312).

The use of sensing mechanisms (claims 3) and storage brushes (claim 13) are well known in the art and the Examiner takes official notice that their use is common knowledge in the packaging art. In the above cases the modification of Leslie would have been obvious to one skilled in the art for the known benefits of each modification. For example, sensing mechanism accurately determines the amount of strapping needed and storage brushes provides for holding elements without any movable parts.

Claims 5,6 and 8-10 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent to Leslie (3,331,312), as applied to the claims above, and further in view of the patent to Sylvester (5,236,329). The patent to Leslie does not show a pivoting carrier roller but rather a reciprocating one. The patent to Sylvester shows a strapping machine with a carrier roller 22.1, 22.3, 22.5 mounted on a lever 23 pivoting about the axle of the strap supply roll making for a compact machine. It would have been obvious to one skilled in the art to substitute the pivoting roller of Sylvester for the reciprocating roller of Leslie to reduce the space required for the machine.

The use of a double lever for the carrier roller, as recited in claim 8, would have been an obvious matter of design choice to a person of ordinary skill in the art to because Applicant has not disclosed that such double levers with a connecting roller provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with a single lever because the double lever structure provides no additional function. Therefore, it would have been an obvious matter of design choice to modify the combination of Leslie and Sylvester to obtain the invention as specified in claim 8.

Claims 9 and 10 read on the combination of Leslie and Sylvester since the lever of the roller is shifterd "along" the axis of the shaft on which it rotates due to its rotation.

ALLOWABLE SUBJECT MATTER

Claims 9 and 10 would be more favorably considered if rewritten in independent form to include all of the limitations of the base claim and any intervening claims and if rewritten to

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overcome the indefiniteness art rejections. It is suggested that these claims positively recite the structure, i.e. the mechanism, for moving the strap carrier on and parallel the axis of rotation of the strap roll.

ADDITIONAL REFERENCES CITED

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

The cited references show strap carriers including reciprocating and pivot rollers. Note the patent to Mitchel that also comprises upstream and downstream holding means.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **571-272-4468**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at **571-272-4467**.

The **FAX** number for U.S. Patent and Trademark Office is **(571) 273-8300**.

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John Sipos
Primary Examiner
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